

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: StaceyAnn McFarlane-Ross	Team: Squad #15	CCRB Case #: 201704548	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/06/2017 5:51 PM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 12/6/2018	EO SOL 12/6/2018	
Date/Time CV Reported Wed, 06/07/2017 7:03 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/07/2017 7:03 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Derek Almeida	25236	946426	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Mia Farina	31801	922346	083 PCT
2. POM Thomas Coleman	29737	953765	083 PCT
3. POM Ryan Kelly	20882	958747	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Derek Almeida	Force: Police Officer Derek Almeida used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Derek Almeida	Abuse: Police Officer Derek Almeida threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

On June 7, 2017, at approximately 5:51 p.m., § 87(2)(b) was § 87(2)(b) in Brooklyn, which is a fish market, handing out pamphlets against eating fish. § 87(2)(b) was informed by several business owners that he was disrupting their businesses and was asked to leave, or he would be physically removed. At some point, one of the business owners, whom § 87(2)(b) assumed was the owner of the fish market, contacted the police. Approximately 15 minutes later, PO Derek Almeida, PO Mia Farina, PO Thomas Coleman and PO Ryan Kelly from the 83rd Precinct responded to the location. § 87(2)(b) spoke to PO Almeida and explained to him what happened, while PO Farina said in Spanish the word, “cuchillo” (knife), to the owner of the fish market who responded no. After that, § 87(2)(b) and the owner of the fish market provided their accounts of the incident to PO Almeida and to PO Farina. At some point, PO Almeida allegedly pushed § 87(2)(b) in the chest and allegedly pinned him against a light pole for approximately five minutes (**Allegation A**). PO Almeida allegedly told § 87(2)(b) if he made any sudden movements he would be handcuffed (**Allegation B**). At that point, § 87(2)(b) began recording the incident using his cell phone. § 87(2)(b) left the location without receiving any summonses.

During the course of the investigation, audio video footage was obtained which captured a part of the incident (BR 03). The video footage does not capture the entire incident, nor does it capture the alleged allegations. The video is recorded on § 87(2)(b)'s cell phone. A copy of the audio video footage is placed below.



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This case is being submitted after the 90 days benchmark because it was initially sent to the Mediation Unit on June 15, 2017 and was returned to the investigator on August 22, 2017, after PO Almeida declined to mediate. In addition, there were delays in interviewing § 87(2)(b) and PO Almeida.

Mediation, Civil and Criminal Histories

- On June 15, 2017, the case was referred to the Mediation Unit. However, it was returned to the undersigned on August 22, 2017, after PO Almeida declined to mediate this compliant.
- On October 4, 2017, a notice of claim inquiry for § 87(2)(b) was sent to the Office of New York City Comptroller. On October 11, 2017, it revealed that there were no records found (BR 11).
- On October 27, 2017, a search of the New York State Office of Court Administration database revealed § 87(2)(b) does not have any criminal convictions (BR 10, 13).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR 12).
- PO Almeida has been a member of the service for nine years and has been the subject of 36 previous CCRB allegations involving 15 cases. In CCRB case number 201115628,

vehicle search and search of person allegations were substantiated by the Board which recommended charges against PO Almeida. The NYPD dispositions for these allegations were no disciplinary actions. In CCRB case number 201201695, a stop of person allegation was substantiated by the Board which recommended charges against PO Almeida. The NYPD disposition for this allegation was not guilty. In CCRB case number 201203655, search of person and stop of person allegations were substantiated by the Board which no recommendations were made against PO Almeida. The NYPD dispositions for these allegations were no disciplinary actions due to the Statute of Limitations. In CCRB case number 201408874, an abuse, categorized as other allegation was substantiated by the Board which recommended formalized training against PO Almeida. The NYPD disposition for this allegation was formalized training.

Findings and Recommendations

Allegation A -Force: Police Officer Derek Almeida used physical force against § 87(2)(b)

§ 87(2)(b) (BR 01, 02, 04) testified that once PO Almeida and PO Farina arrived to the scene, PO Almeida made physical contact with him. § 87(2)(b) explained in his unverified telephone statement that the owner of the fish market informed PO Almeida in Spanish that he had a knife. At that moment PO Almeida allegedly grabbed and squeezed his left arm and allegedly shoved him on the light pole in which his back made contact with the pole. In his CCRB sworn statement, § 87(2)(b) explained after PO Almeida gathered everyone's account of the incident, PO Almeida allegedly pinned him to the light pole. Although § 87(2)(b) stated he did not recall all of what happened, and referenced that the cell phone audio recording captured the incident. He described PO Almeida push him with an open palm on his chest onto the light pole in which he was pinned for approximately five minutes. § 87(2)(b) described he step back once and his back made contact with the light pole. § 87(2)(b) explained at that moment when he was pinned against the light pole, he took his cell phone and recorded the rest of the incident.

PO Farina (BR 06) and PO Almeida (BR 09) testified that they responded to the location as it came over the radio as a knife assault. Upon arriving to the location, § 87(2)(b) approached their vehicle. PO Farina explained § 87(2)(b) identified himself as the caller, but could not understand what he was saying as he was screaming loudly. PO Farina and PO Almeida went to check if a knife was in the area. PO Farina spoke to the owner of the fish market and stated in Spanish knife, in which the owner informed her there was no knife, but reported a knife so § 87(2)(b) could leave. PO Farina explained other business owners informed her and PO Almeida that § 87(2)(b) has been disruptive to their businesses. Both PO Farina and PO Almeida asked § 87(2)(b) to leave over 10 times and each time he refused to leave the location. PO Farina explained she observed § 87(2)(b) moved close to PO Almeida leaving less 10 feet between them, and PO Almeida with an open palm, gestured to § 87(2)(b) to stay his distance. She explained, § 87(2)(b) was not pushed, and was not pinned against a light pole. She did not remember hearing § 87(2)(b) complain of any pain.

PO Almeida explained § 87(2)(b) became aggressive by screaming at him that it was his constitutional right to hand out pamphlets, flailing his arms and walking close to his face. PO Almeida described § 87(2)(b) was approximately two inches away from his face, and he

instructed § 87(2)(b) approximately 10 or more times to step back and to maintain his distance in which § 87(2)(b) did not comply. PO Almeida extended his entire arm which made contact with § 87(2)(b)'s chest to indicate to § 87(2)(b) he should step back. PO Almeida did not use force and described it was a simple touch to guide him back. PO Almeida explained § 87(2)(b) moved close to the light pole, but § 87(2)(b) did not complain of any pain or injury to his back. PO Almeida explained § 87(2)(b) told him not to touch him. PO Almeida did not pin § 87(2)(b) to the light pole for five minutes. PO Farina and PO Almeida were shown the cell phone audio video footage (BR 03) which captured some of the incident. At the 26 seconds mark of the footage, it shows PO Almeida fanning down the pamphlets that were in § 87(2)(b)'s hand and were close to his face. PO Farina explained this was the action she was describing PO Almeida used towards § 87(2)(b). PO Almeida explained at this mark, the video does not capture his actual hand gesture in which he used to have § 87(2)(b) keep his distance.



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PO Coleman (BR 07) testified he responded to the location and upon his arrival as the second unit, PO Almeida and PO Farina were already at the location. Although he did not speak with PO Almeida or PO Farina, he observed § 87(2)(b) speaking with them as they were determining whether a knife was at the location. PO Coleman explained he also spoke to § 87(2)(b) to determine if a knife was present or not. Although PO Coleman stood next to PO Almeida and PO Farina, he did not remember seeing PO Almeida make physical contact with § 87(2)(b). He did not see PO Almeida push § 87(2)(b) nor did he hear § 87(2)(b) complain of any pain or injury to his back.

PO Kelly (BR 08) testified he responded to the location as back up. While at the location, PO Kelly did not speak with anyone, and since he was back up, he would not do any talking. He did not remember the incident and was relying on his memo book entry which noted he was at the location. He did not witness PO Almeida use physical force against § 87(2)(b) nor did he see PO Almeida push § 87(2)(b).

§ 87(2)(g)

Allegation B –Abuse of Authority: Police Officer Derek Almeida threatened to arrest

§ 87(2)(b)

§ 87(2)(b) testified that during his interaction with the officers in front of the fish market, PO Almeida threatened to place him in handcuffs if he made any sudden movements. § 87(2)(b) perceived this statement to be a threat of arrest against his person. However, PO Almeida did not verbally state that he would be arrested.

PO Almeida testified he explained to § 87(2)(b) he could be arrested for criminal trespassing if he entered the fish market against its owner's wishes. PO Almeida stated that the owner of the fish market told him that § 87(2)(b) was not welcomed in his store, but declined to press criminal charges against § 87(2)(b) during this incident.

PO Farina explained since the store owner did not want § 87(2)(b) in the store and this information was relayed to her and PO Almeida, § 87(2)(b) could have been charged with

criminal trespassing. PO Farina warned § 87(2)(b) if he did not leave, he would be arrested for trespassing.

PO Coleman testified when he arrived to the scene PO Almeida was already speaking with § 87(2)(b) PO Coleman did not hear PO Almeida threaten to arrest § 87(2)(b)

PO Kelly testified he did not remember the incident.

According to the New York State Penal Law, Section 140.05, a person is guilty of trespassing when he knowingly enters or remains unlawfully in or upon premises (BR 14).

§ 87(2)(b) explained when PO Almeida told him he would be handcuffed if he made any sudden movement he interpreted to be a threat of arrest, although he did not hear PO Almeida verbally tell him he would be arrested. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: 15

Investigator: _____ StaceyAnn McFarlane-Ross _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date